CAN A MAN BE PREVENTED FROM TRADING UNDER HIS OWN NAME? .. p. 575
THE TRIAL OF MATRIMONIAL CAUSES .. .. p. 576

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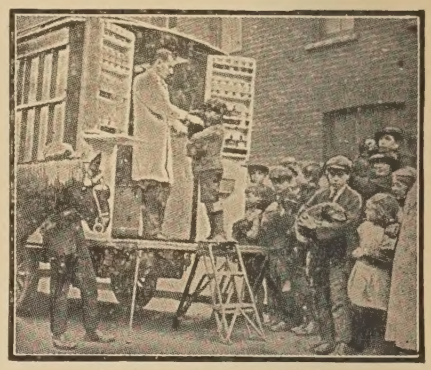

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The Solicitors' Journal

VOL. LXXVIII. **Saturday, August 18, 1934.** No. 33

Current Topics: A Notable Centenary—Circuits in the Colonies—Ribbon Development—Liberty to Work Coal: Income Tax—The University Boat-race as "Entertainment" 573

Can a Man be prevented from Trading under his own Name? 575

The Trial of Matrimonial Causes .. 576

Company Law and Practice 577

A Conveyancer's Diary 578

Landlord and Tenant Notebook .. 579

Our County Court Letter 580

Correspondence 580

Points in Practice 581

To-day and Yesterday 583

Obituary 584

Reviews 584

Books Received 584

Notes of Cases—

In re a Reference under the Judicial Committee Act, 1833, and *In re* Piracy *Jure Gentium* 585

Williamson *v.* Ough (Inspector of Taxes) 585

Central London Railway *v.* Commissioners of Inland Revenue .. 585

Duke of Westminster *v.* Commissioners of Inland Revenue .. 585

Alfred Leney & Co., Ltd. *v.* Whelan (Inspector of Taxes) 586

In re Audit (Local Authorities) Act, 1927; *In re* A Decision of H. W. McGrath 586

In re a Solicitor 587

Table of Cases previously reported in current volume—Part II 587

Rules and Orders 587

Legal Notes and News 588

Stock Exchange Prices of certain Trustee Securities 588

Current Topics.

A Notable Centenary.

On 1st November next a dinner is to be held in the Hall of the Middle Temple to celebrate the centenary of the coming into operation of the Central Criminal Court Act, 1834, and a large and distinguished list of guests is expected to be present. Despite its official title, the Court is still popularly known as the Old Bailey, and, like many another English institution, it is of a somewhat anomalous character in respect of its constitution. The framers of the Act, bearing in mind that it was primarily a Court for the City of London, in enumerating those eligible to sit as judges, gave pre-eminence to the Lord Mayor even before the Lord Chancellor and the judges of the Supreme Court. The City Aldermen are also placed in the panel, if such a phrase may be used, of the judges, and among the other officials to whom jurisdiction is given, is the Dean of Arches who seems in this collocation to be somewhat out of his parish; but all these anomalies exist only on paper, for, as we all know, the judges are the Recorder of the City of London, the Common Serjeant, the judge of the City of London Court, and one of the judges, of the King's Bench Division in rotation to dispose of the graver cases. In *Leverson* v. *Reg.*, L.R. 4, Q.B. 394, a curious point arose as to the construction of one of the sections of the Act of 1834 which says that it shall be lawful for the judges of the Court "or any two or more of them, to inquire of, hear, determine and adjudge," the offences specified. It was sought to impugn the validity of certain proceedings by reason of the fact that during the trial an Alderman was not present all the time. The Court of Queen's Bench held that the enactment did not require that two judges should sit on the trial of an indictment, and that, assuming the presence of one of the Aldermen named in the commission was necessary in addition to the presiding judge, it was no ground of error that the same Alderman was not present throughout the trial. The extent of the Court's jurisdiction has also been inquired into in a number of cases: for example, it has been decided that the Court had jurisdiction to try a foreigner for manslaughter committed on board a British vessel lying in the River Garonne at a spot about 300 yards from the nearest shore, within the ebb and flow of the tide. So also it has been held that the Court has jurisdiction to try an indictment for larceny committed an board a British ship in a river in China.

Circuits in the Colonies.

In view of recent proposals for the abolition of some of the smaller circuit towns and the grouping of others in our own country in order to minimise useless judicial time—proposals which, till now, have met with little sympathy from those connected with the towns in question—it is significant that in certain of the colonies the trend of opinion seems to move steadily the other way. In the newly published report of the Commission appointed to inquire into the administration of justice in criminal matters in Kenya, Uganda, and Tanganyika, the circuit system there prevailing is considered, and, instead of suggestions for the decrease in the number of circuit towns, the proposal is that these should be increased. As is said: "We regard it as most important that trials by the High Court should be held in the district in which the crime was committed and the witnesses reside. The High Court should be so constituted that it can hold assizes at frequent intervals not only at provincial headquarters but at district headquarters also. The ideal to be aimed at is that the court should so arrange its sessions that it will never be necessary for witnesses to have to travel more than fifty miles from their homes to the place of assize . . . More frequent decentralised circuits are in our view essential." This is an interesting and important suggestion, but, of course, it has to be borne in mind that the position in those African colonies is not parallel with the conditions prevailing at home, but even here the periodical visit of a "red" judge provides a spectacle which has a profound influence upon those who witness it; much more is this the case in the colonies. Pascal in his great book, "Les Pensées," points out how the imagination is touched by august spectacles, and adds that judges have been conscious of this as is evidenced by the robes which they wear and the imposing courts wherein they administer justice. Whether the recommendations of the Commissioners in the report to which we have referred will receive the support of those in authority we do not know; some have failed, so far, to find acceptance, but this one as to the expediency of creating more assize towns so as to bring justice to the doors of all the inhabitants is so consonant with what are the needs of the colonies and the convenience of the natives that it is to be hoped it will be adopted, and that without undue delay.

Ribbon Development.

Mr. Barry Parker, who is chairman of the Town Planning and Housing Committee of the Royal Institute of British

Architects, points out in an interesting and important letter to *The Times*, 7th August, that too much reliance should not be placed upon the powers conferred on local authorities to prepare schemes under the recent Town and Country Planning Act in relation to the prevention of ribbon development. Those who are relying upon the power given to town planning authorities to zone land as not to be built upon except in connection with agriculture "seem," to use Mr. PARKER'S words, "to overlook two things: (1) That compensation would be payable; or (2) that otherwise the power to prohibit building on any land not rendered unfit for building upon—say, by its liability to flooding—only exists where the town planning authority is satisfied that other land suitable for such building is available on reasonable terms, and either (*a*) that the operations would involve danger or injury to health by reason of the lack of roads, sewers, water supply or any public services, and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or (*b*) that the operations would be likely seriously to injure the amenity of the locality." The same letter alludes to the powers vested in a town planning authority to limit the number of road junctions, subject to the provision of adequate access to a landowner's property, and to purchase land abutting on a road—the latter, it is suggested, being in general preferable to compensation for the sterilisation from building use when the land for the road is being acquired. The beauty of the new Guildford-Godalming By-pass Road, heightened as it is by comparison with other roads of the same character, is sufficient indication of the urgency of the problem. The Surrey County Council has, however, power by private Act to prohibit building within 200 feet of specific roads, but this power alone will be insufficient to preserve the new road's rural beauty. But the preservation of the beauty of trunk roads is not everything. There is, perhaps, something to be said for the view which, while not countenancing the intensive development found, for example, on the Kingston By-pass, would prefer to see the arterial roads suburbanised than the character of the smaller roads and lanes—which still exist in great number for those prepared to take the trouble to use a map—destroyed by the operations of the speculative builder.

Liberty to Work Coal: Income Tax.

A SHORT but important point of Income Tax Law was decided by the House of Lords in the recent case of *Elliott* (*Inspector of Taxes*) v. *Messrs. J. H. and F. H. Burn* (78 SOL. J. 550). The respondents granted to a colliery company in 1906 the surface liberties over their land required for the working of coal, and in 1922 they granted to the same company liberty to work coal under the land on a rent and royalty basis. There was full liberty to withdraw support on payment of compensation. The surface was let to a farmer at a rack rent and that sum was taxed under Rule 1 of Schedule A of the Income Tax Act, 1918. The dispute arose concerning sums amounting to £2,948 16s. which the respondents had received from the colliery company for the years 1923 to 1929 inclusive. The Crown contended that the amounts received under the agreement of 1922 came within the "other profits not before enumerated . . . arising from lands" under Rule 7 of Part II of Schedule A. Lord WARRINGTON OF CLYFFE said that before such a claim could succeed, the Crown must establish that such alleged profits arose from some hereditament, not being the lands themselves the subject of taxation under Schedule A, for those last-mentioned lands were in the actual possession and occupation either of the owner or of his tenant. The judgment indicates that if the payments were to be regarded as arising from the right of support (as in a sense they did), they had already been dealt with under Rule 1, the right of support not being an easement but a natural incident to the land itself. There was a two-fold answer to the proposition that the payments should be treated as arising from a separate hereditament consisting of an easement of a right vested in the colliery company to let down the surface without interference on the part of the surface owners. First, there was no actual surrender of the right of support: the lease gave the company, for a limited and uncertain period, liberty to withdraw support which meant that the respondents during the term would not seek either to recover damages for nuisance or an injunction. The provision for compensation could only be understood on the footing that the right to support continued to exist. Secondly, the grant of a right to let down the surface would be a detriment to the surface owners and the learned Lord said that he could not see "how sums of money received as the consideration for granting the right to inflict that detriment could be profits or gains arising to the owners of the surface from such right itself." It was held that the payments were not within Rule 7 of Part II of Schedule A so far as they were made before 1927-8. The same result followed with regard to the subsequent payments, it being common ground that the legal position was not altered by the transfer of the rule to Schedule D under the Act of 1926. The sums in question—if they represented a profit—came to the respondents in respect of their property in the lands themselves. Tax thereon has been assessed on the annual value as ascertained under Rule 1. The alternative claim of the Crown that the sums constituted annual payments chargeable under Case III of Schedule D failed on the authority of *Salisbury House Estate Ltd.* v. *Fry* [1930] A.C. 432.

The University Boat-race as "Entertainment."

THE entertainment tax, imposed by the Finance (New Duties) Act, 1916, s. 1, has given rise to some rather troublesome test cases, and the latest, reported in *The Times*, 5th July, concerns those who provide accommodation to see the boat-race. The report records the decision of Mr. FRY at Bow-street, but, with every probability, as he suggests, the case will go further and higher. A person and a company were summoned for not having paid entertainment tax under the above Act in respect of passengers carried in a pleasure steamer from Westminster to Mortlake on the day of the boat-race. The steamer was moored at Mortlake for rather over an hour until the race was over, the passengers having a clear view of the last half-mile. Each was charged 7s. 6d., and it was computed, whether by arrangement or otherwise does not appear, that 2s. of this fare should be allocated to the journey up-stream, leaving 5s. 6d. as payment for the entertainment, on which tax was claimed and formally refused. "Entertainment" is defined in the Act to include "any exhibition, performance, amusement, game, or sport to which persons are admitted for payment." Counsel for the Commissioners of Customs and Excise contended that the boat-race was an "amusement, game, or sport," and Mr. FRY, taking that view, imposed penalties. That the amusement, game, or sport need not be provided by the parties charging admission to view it has previously been decided, see, for example, *Gibson* v. *Reach* [1924] 1 K.B. 294, where householders on the line of a civic procession charged for a view of it, and were held liable to tax. On the other hand, it has recently been held in *Attorney-General* v. *Southport Corporation* (1933), 77 SOL. J. 557, that the mere sight of persons swimming about in a marine swimming bath, on however majestic a scale, does not attract the duty. The boat-race is, no doubt, an organised contest, and its entertainment value is as high as that of a cricket or lawn-tennis match, for a view of which duty would undoubtedly be payable. In the University boat-race neither the contestants nor the clubs nor the Universities which they represent derive any benefit, directly or indirectly, from the money paid by spectators for a view of it, which differentiates it from many other sports. Possibly, however, this fact may be adduced as an argument for the justice of the tax, since those who provide the entertainment give it for nothing to those who exploit it for gain.

Can a Man be prevented from Trading under his own Name ?

Is it possible to restrain a man from using his own name for trade or business purposes ?

The recent unsuccessful action of the organisation known to the public as the Albert Hall, by which it was sought to prevent Mr. Albert Edward Hall from using the name " The Albert Hall Orchestra " in his business of supplying orchestral performers to theatres and other bodies, provides yet another and a novel instance of an attempt to invoke certain well-known but difficult principles. In point of fact, Mr. Justice Clauson found it impossible to believe that Mr. Hall's activities could be confused with those of the Albert Hall, and held that no reasonable danger of damage to that body could be visualised.

No branch of judge-made law is more clearly rooted in expediency and common sense than that which deals with injurious falsehood. Of this wrong possibly the most important, and certainly the most frequent variety is that known as " passing off," and though in given cases complicated questions of fact may emerge, the underlying principles are well settled in all except one respect. It is manifest from the reports that when the alleged " passing off " involves the use of a defendant's own name there is a welter of decisions, and a dubious finality.

The wrong of passing off is defined by Sir John Salmond (" Law of Torts," 7th ed., p. 583) as " to sell merchandise or carry on business under such a name, mark, description or otherwise in such a manner as to mislead the public into believing that the merchandise or business is that of another person."

The essential ingredient of the wrong is that the public is likely to be deceived, and since *Millington* v. *Fox* (1838), 3 My. & Cr. 338, it has not been necessary to prove that there was any intent to deceive in order to obtain an injunction. In order to obtain, in addition, more than nominal damages, such intent must be shown.

Where a defendant carries on a trade or business under his own name and it is alleged that by so doing he interferes with a plaintiff's rights, the difficulty which so often has arisen appears to be the result of two principles of cardinal importance which cannot, in all circumstances, be applied together. The first has already been set out, namely, that a man must not represent that his goods are those of another, the second is that an individual is entitled to trade under his own name. It requires little imagination to perceive a possible conflict between the two principles, since, in certain circumstances, a man trading under his own name, and whether intentionally or not, may mislead the public.

A careful consideration of the cases leads one to make the suggestion that it would be better if the courts stated clearly and boldly that the first principle is paramount, and that a man is not entitled to use his own name for trading purposes in such a way that by so doing and to his knowledge the public is misled into thinking that his goods are those of another.

How does this view accord with authority ? Sir John Salmond expresses an opinion with which it is not possible to agree without considerable qualification. After pointing out the obscurity of the topic, he says : " It would appear, however, that subject to certain qualifications an individual is entitled to trade under his own name regardless of the fact that his business may be thereby confused with the business of some other person bearing the same or a similar name. . . . No man can by prior use acquire a monopoly in his own name. Nor does it make any difference in such a case that a trader using his own name is well aware of the fact that his business will be confused with that of a rival trader, and intends to take the advantage which such confusion will confer on him."

This paragraph appears to be largely based on two cases : *Kingston Miller & Co.* v. *Thomas Kingston & Co. Ltd.* [1912] 1 Ch. 575, and *Turton* v. *Turton* (1889), 42 Ch. D. 128. In the former case, at p. 581, Warrington, J. (as he then was), said : " . . . although the use of the name is calculated to mislead, it is possible to justify that use. Now one example of a sufficient justification is to be found in this. An individual who is not under any contractual restraint may start business on his own account and in his own name, and, if he does so he is not liable to be restrained at the suit of another individual of that name or of a company of that name, notwithstanding that his carrying on his business under his own name may be calculated to mislead."

The above statement is categorical and unqualified, but with deference to the distinguished judge from whose judgment it is taken, it is not in accord with an overwhelming body of authority.

In *Turton* v. *Turton* it was held that although there was a probability that the public would be occasionally misled by the similarity of the names, the plaintiffs were not entitled to an injunction restraining the defendant from using the name in question. In this case it is obvious that the learned lords justices thought that a man to whose knowledge the public were mistaken in regarding his goods as those of another was entitled to go on trading without correcting the mistake. It is submitted that in this respect the decision is unsound, and should not be followed. Of it Buckley, L.J., said that it had been qualified by *Reddaway* v. *Banham* [1896] A.C. 199, whereas Lord MacNaghten in the latter case was at a loss to know why *Turton* v. *Turton* was ever reported, though his reason for this trenchant remark appears to be that the plaintiff's case was extravagant.

Cases where the production of a particular person or company has acquired a secondary significance which is associated in the mind of the public with the name of that person or company afford an interesting body of law out of which it is submitted the true view ultimately emerges. " If for instance blacking be sold as Warren's blacking, and it has become to be known exclusively as blacking manufactured by a certain person named Warren and carrying on business in that name, and if another person of the name of Warren tried to carry on business as Warren's Blacking Co. and sells blacking, he might be restrained from doing so "—so Lord Halsbury in *Electomobile Co. Ltd.* (1907), 98 L.T., at p. 258. And where a defendant named Valentine invented processes for the extraction of meat, it was claimed by the plaintiff firm who had long marketed a different production of the same generic order that the use of the name Valentine must lead to deception. In the Court of Appeal Collins, L.J., said, " . . . the main defence set up . . . was that the basis of the claim for passing off was the identity of the name with the name of the plaintiffs ; and that, so long as the defendant used his own name, and that was the real force of the deception, his position could not be impugned. Now from that proposition I absolutely dissent. If you introduce into it that which has been found as a fact in this case . . . namely, that the name which does form the basis of the deception has acquired a secondary significance, and means only, in the markets where this product is sold, the juice or extract manufactured by the plaintiffs, it does not seem to matter a pin's point whether the deception arises from the use of the name which is, as it happens, the name of the defendant, or whether it arises from the use of any other description which in a sense, may be accurate of that which he sells. For, if the thing which he sells has come to be known in the market as being something made by somebody other than himself, it is impossible for him to sell it *simpliciter* by that name, although it is his own, without misleading purchasers " : *Valentine Meat Juice Co.* v. *Valentine Extract Co. Ltd.* (1900), 83 L.T., at p. 259.

In *J. and J. Cash Ltd.* v. *Cash* (1902), 19 R.P.C. 181, a defendant was restrained from carrying on business in marketing articles such as woven names and initials without taking

reasonable precautions to make it clear that his articles were not those of the plaintiffs.

In *Brinsmead* v. *Brinsmead* (1913), 30 R.P.C. 493, Buckley, L.J., surely expresses the true basis of the position when he says: "If a man makes a statement which is true, but which carries with it a false representation and induces the belief that his goods are the plaintiff's goods, he will be restrained by injunction. He cannot rely on the fact that his statement is literally and accurately true, if, notwithstanding its truth it carries with it a false representation . . . In the application of the above principles which I have just stated, there is, in my opinion no difference whatever where the true statement consists in an accurate statement of the defendant's name as distinguished from any other true statement of fact, if of course he has evidence that by the use of his own name deception results. If a trader takes a name which is not his own name, but that of a rival trader, and uses it in his trade, no doubt that is very strong evidence that he intends to deceive, and the courts will fasten upon that in any case in which it occurs, but if that is not so, if he is simply using his own name and it is proved that its use results in deception, he will be restrained even from using his own name without taking such steps as will preclude the deception, which, by the hypothesis is in danger by using his own name . . ."

This view, which it is respectfully submitted is infinitely to be preferred to that expressed by Sir John Salmond, *supra*, who proceeds, it may be thought, without complete consistency, to quote Romer, J. (as he then was), in the case of *Joseph Rodgers & Sons Ltd.* v. *W. M. Rodgers & Company* (1924), 41 R.P.C. 277. The learned judge there said, at p. 291: "It is the law of this land that no man is entitled to carry on business in such a way as to represent that it is the business of another; that is the first proposition. The second proposition is that no man is entitled so to describe or mark his goods as to represent that the goods are the goods of another. To the first proposition, I myself think there is an exception; a man in my opinion is entitled to carry on his business in his own name so long as he does not do anything more than to cause confusion with the business of another and so long as he does it honestly. It is an exception to the rule which has of necessity been established . . . To the second rule there is no exception at all . . . It is not necessary that there should be an exception to that. It is perfectly legitimate for a man in the cutlery business to carry on business under his own name, whatever that name may be, but I can see no necessity for his making his cutlery with the name (although it is his own name) which may have the effect of passing off those goods as the goods of the plaintiff . . ."

Where does confusion stop short and dishonesty begin? Is not the test one of whether there is a false representation or not? Once a man has notice that there is "confusion" which results in the public buying his goods in the mistaken belief that they are produced by another, then surely it is right that he should be made to distinguish his goods in some way which makes that confusion impossible. Confusion known to exist slides imperceptibly into dishonesty. In this connection, is not the view of Buckley, L.J., in the *Brinsmead Case*, *supra*, of greater force and clarity?

In his comprehensive review of the authorities the learned author of "Kerley on Trade Marks," says, p. 617, 6th ed.] "The inclination of the courts is to treat the question whether the use of the name in question by a defendant is calculated to pass off his business or goods as that or those of the plaintiff is one of fact in each particular case, as though there were no difference in principle between a man's own name and any other apparently descriptive word."

Would it not clear up a great many differences if the courts recognised that the proposition that a man is entitled to sell or trade in his own name is no longer sacrosanct, once it clashes with the other and dominant principle that he must not in any circumstances represent that his goods are those of another person?

The Trial of Matrimonial Causes.

Two cases of considerable interest to magistrates, paid and unpaid, and their clerks, and, indeed, to all who practise in courts of summary jurisdiction, were recently decided by a Divisional Court of the Divorce Division consisting of Bateson and Langton, JJ.

In the first of these (*Potts* v. *Potts* (1934), 50 T.L.R. 386), a husband appealed from an order made by local justices directing that he should pay his wife 15s. a week maintenance on the ground of desertion. No reasons were given for the order, and when requested for a copy of the magistrates' reasons for their decision for the purposes of an appeal, the clerk to the justices replied to the effect that "it is not the practice of the justices to give reasons for their decisions." In the second case (*Romilly* v. *Romilly* (1934), 50 T.L.R. 387), a wife appealed from the decision of the magistrate sitting at Lambeth Police Court dismissing her summons for desertion. The hearing was adjourned several times, and when the learned magistrate eventually gave his decision he adduced no reasons, and, indeed, had not been asked for reasons.

In allowing the appeal in the former case and dismissing the appeal in the latter, the Divisional Court stressed two points of importance:—

1. *That magistrates should always give reasons for their decisions.*

Bateson, J., in the first case, said: "I think magistrates should always give their reasons for their decision, especially when asked for them," and in the second case Langton, J., said: "The duty to furnish reasons has clearly been laid down in the cases which have been cited. This court is very wide awake to the advantages which the bench has of hearing the witnesses and which the Appellate Court does not enjoy . . . On the other hand, it is of primary importance that this court should know the reasons on which the magistrates have acted. This court is not endeavouring to impose on magistrates the necessity of producing long and elaborate reasons for their decisions, but desires a concise statement of the grounds of their decisions."

Obviously, to be on the safe side, such reasons should be stated in all cases, regardless of whether or not any intention of appealing is foreshadowed.

2. *That contested matrimonial cases in the summary jurisdiction should not be prolonged by a series of adjournments.*

In *Romilly* v. *Romilly*, Bateson, J., said (at p. 387): "It was most unfortunate that this case lasted such a length of time. These matrimonial cases are serious cases and affect the lives of the parties so closely that it is a great misfortune that such a case should be adjourned four or five times until it was brought to an end."

The writer is not, of course, aware of the circumstances under which the adjournments in the present case were made, but, speaking generally, the words of the learned judge come as a timely reminder. It has become a far too common practice to adjourn matrimonial cases time and again in the fond hope that the parties may "get together" and solve their difficulties, however remote such a prospect may seem; and the temptation to follow this course is very strong where the magistrate is faced with a heavy list of cases waiting to be disposed of. The real truth of the matter is, of course, that special courts are badly needed to deal with cases of this nature.

One further point of great importance is stressed somewhat obliquely by the Divisional Court, and that is the duty of the magistrates' clerk to furnish a copy of the magistrates' reasons for their decision to any party requiring the same. This point is not a new one, for in *Cobb* v. *Cobb* [1900] P. 145, Jeune, P., said (at p. 146):—

> "In the present case the clerk appears to have been under some mistake or misapprehension . . . He disputed with the husband's solicitors when they applied for a copy of his notes as to whether a *mandamus* would lie to compel him

to furnish them . . . I am reminded that I should state again, so that no misunderstanding should arise in future, that the notes to be taken and furnished by magistrates' clerks on the hearing of all applications under the Act of 1895 "—i.e., the Summary Jurisdiction (Married Women) Act—" are to include not merely the evidence but the decision ; and, further, the notes should state the reasons of the justices for arriving at their decision . . ."

That case was followed in *Barker* v. *Barker* (1905), 21 T.L.R. 253, where, in spite of frequent demands for a copy of the clerk's notes, the appellants had been unable to obtain one, the clerk alleging (despite the decision in *Cobb* v. *Cobb*, which was brought to his notice) that (1) he was not bound to take a note at all ; (2) if he did so take a note he merely did it for his own information ; and (3) there was no power to make him take a note, and that he would not supply one until ordered to do so. On application to the bench, the magistrates said that they had no control over their clerk in the matter and could offer no assistance.

On appeal, counsel for the appellants suggested that *three* remedies were available in such a case : (*a*) a *mandamus* ; (*b*) the clerk might be indicted for misconduct in the execution of his office ; (*c*) a motion for a rule *nisi*. Gorell Barnes, P., without commenting on these suggested remedies, directed that the Registrar should communicate with the magistrates' clerk with a view to obtaining a copy of his notes.

That these two decisions, both of them by presidents of great renown, are not generally known or, if known, observed, is evident from the recent proceedings in the Divisional Court.

Company Law and Practice.

Effect of Liquidation.

LET us spend a few moments examining the effect of liquidation, and particularly from the point of view of the creditor of the company. The statutory provisions relating to compulsory and voluntary winding up are curiously different in some respects in which one might expect them to be the same ; thus s. 228 says that in case of a voluntary winding up the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof ; provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

The side-note to this section is : " Effect of voluntary winding up on business and status of company," while it and the section immediately following it, namely, s. 229, which avoids transfers of shares made without the sanction of the liquidator after the commencement of a voluntary winding up, come under a cross heading in the Act : " Consequences of voluntary winding up." Now if you turn to the earlier sections which deal with compulsory liquidation, you might expect to find similar sections ; the cross heading " Consequences of Winding Up Order " comes immediately before s. 176. This last-mentioned section deals with a formal, though very necessary, requirement, the forwarding of a copy of the winding up order to the registrar of companies for registration. The next section, 177, is a very important one to which I will refer again later ; and s. 178 is one to which there is a side-note, " Effect of winding up order."

One might almost expect that a section bearing such a side-note might contain matter not unlike that in a section which has a side-note as to the effect of a voluntary winding up. But no, such a thing would be too obvious, and we therefore have a section which says that an order for winding up a company shall operate in favour of all the creditors, and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory. Why should not there be a section as to cesser of business where an order is made ? It could not, of course, be in the same form as s. 228, because, at the date of the presentation of the petition, which is the date of the commencement of the winding up, if an order is subsequently made on that petition, *non constat* that the company will be wound up ; but it could be in somewhat similar terms.

Other instances occur of this sort of thing. The powers of the directors, broadly speaking, cease on a voluntary liquidation (ss. 232, 241 (2)), but there is no section which makes the same provision for compulsory liquidation. No doubt this is so, and equally no difficulties arise as a result of such omission, but one cannot help feeling that it would be more satisfactory if there was more uniformity in the Act relating to these matters. However, let us go back to s. 177.

This section provides that when a winding up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose. This only operates in a compulsory liquidation—we will consider later what happens in relation to these matters in a voluntary winding up. This section is a very convenient, as well as a very important, one ; it automatically stays proceedings against the company and thereby prevents a good deal of useless and embarrassing litigation.

One small point which may be remarked is that, when an order is made in respect of a company against which a debenture-holder's action is proceeding in the Chancery Division, that action cannot be further pursued without leave from the court having the conduct of the winding up. Such leave is in fact given almost invariably ; it is in effect an action by persons entitled to certain property to give themselves the benefit of that property, and does not concern the company at all, except in so far as it may be entitled to the equity of redemption, which at the present time is often not of any value at all. While on this point, it may be mentioned that the making of a winding up order in such a case automatically causes a transfer of the debenture-holders' action from the Chancery Division to the judge exercising the winding-up jurisdiction (Winding Up Rules, 1929, r. 42).

As I have pointed out, this protection is given automatically only in the case of a compulsory liquidation ; though this should be qualified by saying that it also arises in the case of a winding up subject to the supervision of the court ; but proceedings may be stayed in a voluntary winding up by application made by the liquidator or a creditor or contributory under s. 252 : see, e.g., *Westbury* v. *Twigg & Co.* [1892] 1 Q.B. 77. It is impossible to lay down any general rule as to what will or will not be allowed by the court to be done. As appears above, debenture-holders' actions are allowed to proceed, and the same applies to specific performance actions. The test may be put in this way, that the court will consider what is the most convenient course to pursue to decide the questions which need to be decided. Obviously a specific performance action cannot be properly the subject-matter of proof in the liquidation, but there are many cases where it would be absurd to bring an action, and a proof is the proper method of dealing with the difficulties which have arisen.

One operation which needs special attention is the levying of execution. In the old days it was frequently of great importance that s. 177 should be brought into operation as soon as possible, so that execution should be stayed ; there was, however, the interval to be bridged between the date of the presentation of the petition (if execution were levied before) and the winding up order. But now this question is of little, if any, importance, because of the operation of ss. 268 and 269.

These two sections are founded on ss. 40 and 41 of the Bankruptcy Act, 1914, and introduce into the law relating to companies a necessary reform. In short effect, they

prevent a creditor who has levied but not completed execution before the commencement of the winding up from taking the fruits of his execution which fall into and become part of the general assets, available for the creditors as a whole. Thus s. 268 (1) provides that where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he is not to be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the commencement of the winding up.

A proviso to the sub-section goes even further in favour of the company's general body of creditors by saying that if the creditor has had notice of the calling of a meeting at which a resolution for voluntary winding up is to be proposed, the date on which he had such notice is to be substituted for the date of the commencement of the winding up. In other words, if a creditor gets wind of a contemplated voluntary winding up by finding that a meeting is to be held for the purpose of putting the company into voluntary liquidation he cannot gain any advantage for himself by levying execution quickly and completing it before the resolution is actually passed. Another necessary protection is contained in sub-s. (1) (*b*), which provides that a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

Section 168 (2) defines what is meant by the completion of an execution in the section. An execution against goods is to be taken to be completed by seizure and sale, and an attachment of a debt by receipt of the debt, and an execution against land by seizure, and, in the case of an equitable interest by the appointment of a receiver. It will be realised, I think, that s. 268 is a just one ; and it puts it in the power of any creditor to take effectual steps to prevent one getting a priority over the others. Once it is discovered that an execution is, or is about to be levied, a petition ought to be presented ; indeed, in many cases, it would probably be the right and fair thing for the directors to procure the presentation of a petition as soon as an execution is levied, and by this means to ensure a fair distribution of the assets.

Section 269 is a section which provides machinery for helping to put into effect the provisions of s. 268. Where any goods of a company are taken in execution, and before sale, or completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed, and that a winding up order has been made or a resolution for voluntary winding up passed, the sheriff must, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution are a first charge on the goods or money so delivered (s. 269 (1)). It may be observed that the costs of the execution in that section means the sheriff's costs, and does not include such things as the cost of issuing the writ of *fi. fa.*, *re Woods* (*Bristol*) *Limited* [1931] 2 Ch. 320.

Now the second sub-section contains a provision which operates by way of a stay. Where, under an execution levied for more than £20, the goods of a company are sold or money is paid to avoid sale, the sheriff can deduct the costs of execution from the proceeds of sale or the money paid, but he must retain the balance for fourteen days, and if within that time notice is served on him of a petition for winding up having been presented, or of a meeting having been called to consider voluntary winding up, then if an order is made or the resolution passed the sheriff must pay the balance to the liquidator, who can retain it as against the execution creditor. The rule relating to the notice to be given under this section is Rule 41A of the Winding Up Rules 1929, introduced by the Companies (Winding Up) Amendment Rules 1933: to be found in (1933) W.N., at p. 88, in the miscellaneous matter.

A Conveyancer's Diary.

Settlements upon Trust for Sale.

I HAVE recently been challenged with regard to the view which I have so frequently expressed that (at least in most cases) the system of settled land for which the S.L.A., 1925, is responsible is both unnecessary and foolish. It is true that at one time there was something to be said for it, but in these days its application is in my opinion not only stupid but actually pernicious.

It may be that in very large estates the system can be justified, although I doubt it even then. So far as regards small property it has nothing to be said for it. In any case a trust for sale (a power to postpone the sale being implied) is a much preferable form of settlement. It is always possible to provide that a sale shall not take place without the consent of the person who for the time being is entitled to the income of the proceeds of sale, and so really give him the control. I have never been able to understand why advantage is not taken of that or why a settlor prefers to give to the tenant for life or the person having the powers of a tenant for life an absolute right to sell as and when he pleases.

It will be remembered that trustees for sale have all the powers which are conferred upon tenants for life, and that those powers may be delegated to the person who has the right to the income and is virtually, therefore, the tenant for life.

That is provided for by s. 29 (1) of the L.P.A., 1925, which reads :—

> "The powers of and incidental to leasing, accepting surrenders of leases and management conferred on trustees for sale, whether by this Act or otherwise may, until sale of the land, be revocably delegated from time to time, by writing signed by them to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period ; and in favour of a lessee such writing shall, unless the contrary appears, be sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked."

I may observe in passing, that this section recognises the right of some person "beneficially entitled in possession to the net rents and profits of the land." What then becomes of the theory that there can be no such person, but only a person entitled to the income of the proceeds of sale ? We are constantly being told that, where there is a trust for sale, no one has any interest in the land or in the "net rents or profits" thereof, but only in the proceeds of sale. That, I maintain, is an absurd legal fiction, and this section appears to bear me out. Of course the doctrine of notional conversion has been carried much too far and applied over and over again in a manner which has worked great injustice. That, I am afraid, is rather a hobby horse of mine, and I will not ride it further. Nevertheless, I ask the reader to consider how easy and how much better it is to settle land upon trust for sale rather than under the S.L.A. It is true that it might be difficult to explain to a settlor that a trust for sale, reserving the consent of someone or other (usually the person entitled to a life interest) is by far the best way of providing that the property shall not be sold. The layman will naturally want to know why there should be a trust for sale at all, and I for one, should not like the job of explaining it to him, although it is in fact perfectly true.

PRICES OF BUILDING MATERIALS.

The Minister of Health and the President of the Board of Trade have accepted with regret the resignation of Sir Samuel Roberts, Bt., M.P., as Chairman of the Inter-Departmental Committee appointed to survey the prices of building materials. They have appointed Major Sir Isidore Salmon, C.B.E., J.P., D.L., M.P., to be Chairman of the Committee.

Landlord and Tenant Notebook.

Re-drafting the Covenant to Pay Rent.

No part of the law of Landlord and Tenant is so out of harmony with present conditions as that which deals with rights and remedies relating to rent. Unless draftsmen set about modifying reddendum and covenant to pay rent so that they accord with modern thought, it may well be that Parliament will step in and reform this part of the law as it has reformed other parts.

The notion of rent is older than the notion of contract. The man in the street to-day is so accustomed to contract that he can hardly visualise a state of affairs from which it is absent, and, if he be a party to a lease, wonders why the rent is mentioned twice, that is to say, the amount and intervals are specified in a peculiar phrase commencing with " yielding and paying " but not clearly expressing who or what yield and pay, while an actual undertaking to pay is made much later. It is true that rent would be payable by virtue of either provision alone ; and yet the covenant is not redundant, for if it were not there the landlord, to get his rent, would have to call or send someone to call at the premises on the proper day and the tenant would have to be there with the rent. The present position was demonstrated in *Haldane* v. *Johnson* (1853), 8 Exch. 689, when a tenant, sued on his covenant for a quarter's rent due the preceding 25th December, demurred by a plea that " upon Christmas Day, 1852, being the quarter day, etc., the defendant was at and upon the said demised house and premises for the space of one half-hour before the setting of the sun on the said day, the same being a sufficient time before sunset to allow of the counting before sunset of the money hereinafter mentioned, and continued there from the said time until, at, and after the setting of the sun on the said day, he being, during all the time last aforesaid, ready and willing to pay the sum of, etc." This plea led to a review of a great deal of learning on the subject, and it was shown that Coke's remarks, on which the defence relied, were concerned with forfeiture and actions for debt only, while " Sheppard's Touchstone " correctly expounded the law which required payment under a contract not specifying the place to be made to the creditor " wherever he be, if *intra quattuor maria*." So the defendant had so patiently suspended his Yuletide celebration in vain.

And this occasions the suggestion, why not make the four quarterly payments payable on the first days of January, April, July and October ? Compulsory education and cheap calendars make the continued adherence to four church festivals rather an anachronism.

Another reform that is called for is the introduction of some provision for payment by cheque. In old leases, the covenant to pay rent sometimes said something about " well in hand truly pay in lawful money of Great Britain." If these words are no longer in use, it is merely because they are unnecessary. And while an overwhelming majority of tenants habitually pay rent by cheque, accepted by their landlords, the latter can insist on payment being in specie if they choose. True, it probably would not require much evidence to satisfy a court that a landlord had agreed at least to a suspension of the right of distress till the cheque was cleared (as to this, see *Palmer* v. *Bramley* [1895] 2 Q.B. 405, C.A.) ; but some evidence is necessary, and course of conduct is not in itself evidence. The principle laid down by the Judicial Committee in *Allen* v. *Royal Bank of Canada* (1925), 95 L.J. P.C. 17, by which the remedy is suspended, is not, I think, intended to apply where a better remedy than an action is available (see *Davis* v. *Gyde* (1835), 2 A. & E. 623 and *Henderson* v. *Arthur* [1907] 1 K.B. 10, C.A., as to distress ; *Re J. Defries & Sons Ltd.* [1909] 2 Ch. 423, as to secured debts).

I hesitate to suggest a provision designed to interfere with the right of distress, which has been so much modified by different Acts of Parliament that its treatment occupies far more space in any text-book on the law of Landlord and Tenant than the part it plays in real life would suggest. But, unless other reforms are introduced, I think it fair to suggest some provision to prevent the abuse of this particular remedy. When one considers the position of the plaintiff in *Child* v. *Edwards* [1909] 2 K.B. 753, whose rent was payable on the 24th day of each month, and whose premises were entered and goods seized by bailiffs on Monday, the 25th January, 1909, and who replevied and brought his action in vain, one cannot but reflect that the present law and present-day lease encourage him who has a giant's strength to use it like a giant. The argument advanced for the plaintiff and rejected by the court was that Sunday was a *dies non* for the payment of rent. It is not ; but it is a day on which fulfilment of the obligation may indeed be difficult.

The answer that suggests itself is, then, why not pay on the Saturday ? Technically, it is impossible, of course ; there is no debt to pay ; but I grant that a landlord who accepts an amount as rent will be precluded from recovering it again, and there is authority for the proposition that his executors will be bound by the acceptance. But when it comes to a question of considering the rights of other assignees of the reversion against tenants who have paid rent before it was due, there is an apparent conflict of authority. In *De Nicholls* v. *Saunders* (1870), L.R. 5 C.P. 589, an action for illegal distress, the plaintiff had, at the request of his financially embarrassed landlord, obliged with a payment of two quarters' (£165) rent in advance. That was on 12th March. On 24th March the plaintiff received a notice from the solicitors to the defendants, who had unbeknown to the plaintiff held a mortgage of the reversion almost since the lease was granted, requiring him to pay rent to them. And on 25th March the grantor of the lease was adjudicated a bankrupt. But the plaintiff had no redress.

The conflict, or apparent conflict, is brought about by the decision in *Green* v. *Rheinberg* (1911), 104 L.T. 149, C.A., an action for rent brought by the receiver appointed by a mortgagee of the reversion. The facts were that the defendant occupied under a tenancy agreement entered into in July, 1908, which provided for a term of four years from 29th September, 1908, and then from year to year, at a rental of £75. On 2nd October a document came into being, by which the landlord acknowledged receipt of £219 10s. rent for the four years and stated he was willing to do all reasonable small repairs, gave the tenant the option to continue after the four years at £70, or to purchase for £800. On 20th October the landlord mortgaged the premises, the mortgagee inspecting premises and counterpart agreement. And in this case the tenant was held to have a good defence because an assignee of a reversion, as had last been laid down in *Hunt* v. *Luck* [1902] 1 Ch. 428, C.A., is affected with notice of all the tenant's rights. The plaintiff cited *De Nicholls* v. *Saunders*, but only one judge made any direct reference to it, remarking that it was decided before the Judicature Acts and that the agreement and payment set up would not support a plea of payment of rent.

The remark shows, I think, that the conflict is apparent only and that the older case has not been disposed of. The facts were essentially different. What happened in *De Nicholls* v. *Saunders* was that the tenant lent his landlord £165 repayable by two instalments of £82 10s. on 25th March and 24th June next ; while in *Green* v. *Rheinberg* the parties negotiated a surrender and a new tenancy—quite a different story. In the one case rent was not due, so rent could not be paid ; in the other, it was made due.

So the fact remains that under present conditions it is safer, on the whole, to pay rent late than early, though neither course is sanctioned by law or by agreement, the instrument of demise. But it may be said that one statute accords a half-hearted recognition of this proposition ; the Agricultural Holdings Act, 1923, s. 24, limits the right of distress on

holdings to which it applies to one year's rent, and then concludes with a proviso that when " in the ordinary course of dealing " payment of rent is deferred by a quarter or half-year, the period is extended accordingly.

To summarise : I suggest that the reddendum and the covenant to pay rent should provide for (1) a place of payment, remittances made at that place being deemed to be tenders ; (2) a longer period than twenty-four hours for payment ; (3) recognition of cheques as conditional payment ; and (4) quarters to correspond to periods of three calendar months.

Our County Court Letter.

THE REMUNERATION OF ESTATE AGENTS.

In *Harford Kingham and Nock* v. *Holyland and F. W. Longmore and Co. Ltd.*, recently heard at Walsall County Court, the claim was for £60 as commission on the letting of a shop, formerly occupied by the defendant company. The plaintiffs' case was that (1) on the 29th December, 1930, they were offered commission (by a representative of the company) if they could find someone to take over its unexpired lease, which was eventually acquired by the freeholder, the first defendant ; (2) the plaintiffs had introduced (and spent two years negotiating with) Price's Tailors Limited, who ultimately took over the premises, at a rent of £600 a year, through the agency of a London firm, the latter having received commission from Price's. The defence was that the plaintiffs were not the effectual cause of the letting, and the first defendant further contended that, by letter of the 4th October, 1932, his solicitors had made an express contract, offering the plaintiffs 10 per cent. commission, conditionally upon the premises being let within a specified period (which had been exceeded) and at a rent, viz., £750, which had not been obtained. Furthermore, the words " in the event of their negotiations being successful " imported a condition that the plaintiffs themselves should complete the negotiations, whereas the London firm had in fact done so. It was pointed out, however, on behalf of the plaintiffs, that they alone had been substantially instrumental in effecting the letting, and the defendants had had the benefit of their services without paying commission to anybody, not even to the London firm. His Honour Judge Tebbs observed that the plaintiffs might have asked for an alteration in the terms of the express contract, but the latter (although made in a loose way) was binding in law, and its terms had not been complied with. Although the plaintiffs had originally introduced the company, which ultimately took the premises, their claim for commission failed. Judgment was therefore given for the defendants, with costs.

VALIDITY OF RIGHT OF SHEEPWAY.

In the recent case of *Yiend* v. *Hammond and Another*, at Winchcombe County Court, the claim was for an injunction and damages for trespass, in the following circumstances : (1) the plaintiff was the owner of Sheep House Field, Woodmancote, adjoining a field known as Hawker's Piece, occupied by the defendants as executrices of their late mother ; (2) in the latter's lifetime no difficulty had arisen with regard to trespass by sheep, and she had admitted owing £3, but the defendants wrongly considered that " death ends debts " ; (3) they had cut down part of a hedge, obstructed access to the plaintiff's stile by erecting a fence, and removed a padlock and chain from his gate ; (4) this was in pursuance of an alleged right of way for sheep, but the defendants' deeds showed no such right ; (5) owing to trespass by forty sheep, the plaintiff had claimed 30s. damage, but the defendants tendered 3s. 2d. and disputed liability for the balance of 26s. 10d. ; (6) it was not desired to claim more than ten guineas damages, but an injunction was important to the plaintiff. The defendants denied that their mother had owed £3, and they further contended that (*a*) they had always driven their sheep home to Hawker's Piece via the Sheep House Field and were entitled to move the padlock and chain ; (*b*) the existence of the gate rendered the stile unnecessary, and they had therefore put up the fence ; (*c*) only thirty-five of their sheep had trespassed. His Honour Judge Roope Reeve, K.C., observed that the pasturage of thirty-five sheep would exceed 3s. 2d. in value, and the stile was an additional convenience. Judgment was given for the plaintiff for £5 5s. damages, plus £3 as claimed, and costs. No injunction was granted, in view of an undertaking by the defendants not to repeat the trespass, either with regard to the sheep or the gate and stile.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

" Finance Act, 1931, s. 28—Denoting Stamp on Counterpart Lease."—" Points in Practice," *Q.* 2995.

Sir,—With reference to the above " Point in Practice," which appeared in the issue of the 30th June, 1934, at p. 467, the words " a case in point, where in the purchase, by a client, of certain *ground rents* reserved by building leases all the counter-parts except one have been stamped " appear at the third line from the top of the second column.

Sub-section (3) of s. 28 states : " This section shall *not* apply with respect to any instrument which relates solely to *incorporeal* hereditaments."

Ground rents are incorporeal hereditaments.

This sub-section appears to have *not* been considered either in the question or in the answer. Readers may be interested in knowing why it was passed over.

11th August. A. E. C.

A lease of building land is clearly not an instrument relating *solely* to an incorporeal hereditament. The object of sub-s. (3) was to exclude from the purview of the sections instruments such as conveyances of rent-charges which otherwise would be within the section by reason of the definition of " land " in the Interpretation Act, 1889.—Ed., *Sol. J.*]

" Premises " or " Premisses."

Sir,—As we are in what is politely called the " silly season," will you allow me through your columns to raise a legal question which is of no importance whatever, but which has always troubled me ? I refer to the spelling of the word " premises," when used, as it so frequently is, in the phrase " in consideration of the premises," meaning " in consideration of what has been stated before." Should not the word in that connection be spelt with two " ss " in the middle, i.e., " premisses " ? And is not the word " premises," with one " s " only in the middle (or should it not properly be) confined to the meaning of *land and buildings* ? I have not looked up the word in the Oxford or any other dictionary, preferring to await with confidence some scathing comment from you or one of your contributors. The only objection that I can see to the reform in spelling which I advocate is that it will spoil the point of the joke made by someone, I forget who it was, who, seeing two women shouting at one another across the street, with their heads out of opposite windows remarked that they could never hope to agree as they were arguing from different premises.

Old Jewry, E.C. Randle F. Holme.
13th August.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31 Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Private Street Works Act, 1892—Several Properties in One Ownership—Appointment of Receiver.

Q. 3009. A council having made up a street under the above Act and the final apportionment having been prepared, and all necessary notices served, are unable to recover the charges apportioned against certain of the premises affected, and they accordingly propose to appoint a receiver of the rents of these premises. They include six houses owned by the same person, and the question has arisen whether the receiver of rents of these six houses can be appointed by the same document, or whether, seeing that in effect each is the subject of a separate and distinct charge, each should be the subject of a separate appointment. The only practical difficulty appears to be the question of costs. If a receiver for all six houses were appointed by one document and before the charges are fully recovered the owner sells the houses to different persons disputes might arise on the apportionment of the costs of the receiver's appointment, whereas if separate appointments are executed the council's costs may be challenged on the grounds that they are excessive, as one appointment would have been sufficient. It is, of course, proposed to appoint the same receiver in respect of all the houses.

A. Reference should be made to s. 13 of the Private Street Works Act, 1892, which gives to a local authority the same powers and remedies as they possess under the Conveyancing and Law of Property Act, 1881. These powers and remedies are now to be found in the Law of Property Act, 1925, reference to s. 109 of which shows what the position would be. We suggest that in view of the liabilities imposed on the mortgagor by that section it might be wise to proceed by way of obtaining a declaration of liability. See the case of *Birmingham Corporation* v. *Baker* (1881), 17 Ch. D. 782. The court would then deal with the appointment of a receiver for the entire property. The position of the mortgagor under the statute is, of course, that of the local authority also. Undoubtedly one receiver for the whole would be the proper course in a case where the ownership is all in the hands of the same owner. It would be different if it were a case of several separate owners.

Settled Land Act, 1925, s. 13—Whether Vesting Instrument necessary to a Valid Compensation Agreement by the Lord—Position when no such Instrument.

Q. 3010. Have the persons who are trustees for the purposes of the S.L.A. under a pre-1926 settlement and in whom the settled estates vested by reason of the tenant in tail being on the 1st January, 1926, and remaining at all material times an infant, a right, as lords of a manor included in the settlement, to enter into a compensation agreement for extinguishment of manorial incidents (including mines and minerals) without having executed a vesting deed in favour of themselves, having regard to s. 138 (5) (i) of L.P.A., 1922, and s. 13 and para. 3 (4) of 2nd sched. of S.L.A., 1925? If the answer is "no," what is the position of a person taking a conveyance of the enfranchised land from the "tenant" after the execution of such an agreement by the trustees as lords of the manor with duly endorsed receipt by the trustees for the compensation?

A. We express the opinion that as the trustees would not be in a position to dispose of the manor until there was a vesting instrument in their favour (S.L.A., 1925, s. 13) they were not properly in a position to enter into the compensation agreement (L.P.A., 1922, s. 138 (3)). A purchaser from the "tenant" is not in a position on an open contract to call for the lord's title to enter into the agreement at any rate so far as the incidents other than the mines and minerals are concerned (L.P.A., 1925, s. 44 (7)), and shall not be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice. He would thus appear to get a good title (except possibly so far as the mines and minerals are concerned) under S.L.A., 1925, s. 13. Mines and minerals are not strictly "incidents" (L.P.A., 1922, s. 128 (2)), but may be treated as such for the purposes of a compensation agreement (L.P.A., 1922, s. 138 (12)). It would appear therefore that on an open contract a purchaser is entitled to call for the title to enter into the agreement as to the mines and minerals and obtains no protection from L.P.A., 1925, s. 44 (7).

Rent Restriction Act, 1933.—Effect of Registration after 18th October, 1933.

Q. 3011. A is the owner of two dwelling-houses, the rateable value of which is £22. She lives in one of them and the other is occupied by B, who became the tenant about a year ago. The house was decontrolled when B became the tenant, and the rent which he agreed to pay was 18s. per week. A (who is an aged lady) omitted to register the property with the local authority as being decontrolled, and B, in February last, took out a summons for the apportionment of the rent under s. 12 of the Act. (This summons has been adjourned by agreement.) A then applied to the court for permission to register, which was granted, and the house was registered on the 7th March, 1934. The controlled rent of the house would appear to be 9s. 6d. per week, and B claims—

(1) Repayment of the difference between the controlled rent, namely 9s. 6d., and the rent which the tenant has paid, namely 18s. per week.

(2) That, despite the registration, the house will remain controlled until A obtains possession under the provisions of the Rent Restrictions Act.

B's solicitors quote for their authority Circular No. 1348, issued by the Ministry of Health to Housing Authorities on the 24th July, 1933. They refer particularly to paragraph 5 of such circular. Please advise whether—

(1) B is entitled to reclaim the difference of rent stated;

(2) Whether the house remains controlled during B's tenancy despite the registration.

A. There are two views as to the effect of the registration after the 18th October, 1933, of a Class C house which had been decontrolled and was let as a separate dwelling at the date of the passing of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. The effect of such registration depends upon the construction of the proviso to s. 2 (2) of the Act. The effect of s. 2 (2) is that, subject to the exception therein mentioned, a Class C house which was let as a separate dwelling immediately before the passing of the Act and which had already been decontrolled under s. 2 of the Act of 1923, will be deemed to be subject to the Acts, unless it was registered by the 18th October, 1933. But if the county court certifies that there was reasonable excuse for the failure to make application for the registration of the dwelling-house within the time limited and application for registration is made within

seven days after the certificate of the county court has been granted, s. 2 of the Act of 1923 shall apply to the dwelling-house *as from the date on which the application for registration is made*. The one view is that the house does not again become decontrolled upon registration, but that the effect of registration is to render the house capable of becoming decontrolled when the landlord next comes into possession or grants a lease as provided by s. 2 of the Act of 1923. This view is supported by a decision of Judge Owen Thompson at Bow County Court (see "Estates Gazette," 7th April, p. 552), and is the view adopted in Circular 1348, dated 24th July, 1933, issued by the Ministry of Health. The other view is that the house is restored to the status of a decontrolled house as soon as the certificate of the county court is lodged with the local authority. This view is supported by a decision of Judge Crawford at Edmonton County Court (see "Estates Gazette," 27th January, p. 132), and by a decision of Judge Richardson at Middlesbrough County Court (see "Estates Gazette," 7th April, p. 552). Until the question is decided by the High Court, it is impossible to say which of these views is correct, though the former view appears to have the greatest measure of support from text-book writers. If the former view is correct, a decontrolled Class C house which was let as a separate dwelling on the 18th July, 1933, became controlled again after the 18th October, 1933, if not registered by that date, and will remain controlled notwithstanding registration in pursuance of a certificate of the county court until the landlord next comes into possession or grants a lease as provided by s. 2 of the Act of 1923. If the latter view is correct, although such a house again became controlled after the 18th October, 1933, if not registered by that date, it would again become decontrolled as from the date on which application for registration is made in pursuance of a certificate of the county court.

Articles of Clerkship—Custody of and Ownership of Draft of.

Q. 3012. Who is entitled to the custody of articles of clerkship both during and subsequent to the expiration of the articles? Is the clerk entitled to the draft of the articles, the articles having been prepared by the solicitor without charge to the clerk?

A. We have not been able to trace any authority upon these points. We take it, however, that The Law Society takes the view that the articles in the normal case belong to the clerk, seeing that the regulations made by the Society under s. 26 of the Solicitors Act, 1932, provide for the return of the articles after an examination to the candidate (and not to the solicitor with whom he is serving): see para. 30 of those regulations. If the clerk can properly be considered the client, and we suppose this is the case, he is entitled to the draft: Solicitors' Remuneration Act, 1881, General Order, para. 3. We suggest it is not material that no costs are in fact paid, seeing that though not paid they are prescribed by the order, and had any costs been payable then the prescribed costs would have been the costs payable.

Sale by Private Treaty—Form of Clause to Forfeit the Deposit, etc.

Q. 3013. We should be glad if you could assist us in connection with the arguments that often arise, when dealing with a sale by private treaty, in respect of cl. 20 of the National Conditions of Sale. Many solicitors for vendors insist upon both parts of this clause remaining in the contract for sale by private treaty. On the other hand, some purchaser's solicitors insist upon both parts being omitted. Our own view is that part (1) should remain in, but part (2) should be omitted. With regard to the omission of part (1), it is suggested that the ordinary rights of a vendor to forfeit deposit are sufficient. We do not know whether this view is correct. Would you kindly let us know what attitude should be adopted by a solicitor acting for both purchaser and vendor when drawing the contract.

A. The Council of The Law Society (Opinion of 29th November, 1900, para. 692, at p. 176 of "Law Usage, etc.," 1923 edition) decided that according to the usual practice in sales by private contract the clause as to the forfeiture of the deposit should run: "If the purchasers shall fail to perform this agreement on their part their deposit should (*sic.*, but query 'shall') be forfeited to the vendors, and the vendors shall be at liberty to resell the property either by public auction or private contract." This opinion supports our subscribers' views, namely, that cl. 20 (1) of the National Conditions is not objectionable on a private sale, and that cl. 20 (2) is not suitable. Under a contract silent on the point, on the purchaser's default the deposit is forfeited (*Mayson* v. *Clouet* [1924] A.C. 980), but probably the vendor has not the right to re-sell and recover any deficiency; at any rate the point is doubtful. No doubt if the Society was now framing a clause, the words "unless the court otherwise orders" would be inserted in the Society's clause after the first use of the word "vendors" and in parenthesis: see L.P.A., 1925, s. 49 (2).

Rent—Mortgage Interest Restrictions (Amendment) Act, 1933—Claim by Tenant in respect of over-payment of Rent.

Q. 3014. The landlord of a class C house after obtaining actual possession between 1923 and 1933, perfectly legally lets it at a rent greater than the maximum which was recoverable while the house was still controlled. In 1933 he fails to register the house (as de-controlled) before the 18th October, and has no reasonable excuse for applying for leave to register now. Can the tenant, on discovering the position, re-claim from the landlord the amount by which the rent he has paid has exceeded such maximum, and if so, as from what date, the 18th July, 1933, or the 18th October, 1933?

A. By the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 2 (2), the landlord of a house the rateable value of which on the appointed day did not exceed the limits mentioned in sub-s. (1), who claims that it was decontrolled under s. 2 of the Act of 1923, must have applied for registration of the house before the 18th October, 1933. If such application was not made, the house will be deemed to be controlled, unless the landlord obtains a certificate of reasonable excuse from the county court, and applies for registration within seven days after the certificate has been granted. It is clear that up to the 18th October, 1933, a class C house, which was de-controlled on the 18th July, 1933, would remain de-controlled. It is also clear that if application for the registration of such a house was not made by that date, then in any proceedings with respect to such house, the house will "be deemed to be a dwelling-house to which the principal Acts apply." The effect is that if such a house was not registered, the amount of the rent payable by the tenant after the 18th October, 1933, must be limited to the maximum amount permitted by the principal Acts. It would not, however, appear that in such a case the rent between the 18th July and the 18th October was similarly limited. Until the 18th October the house remained de-controlled, and it was only in consequence of the failure to apply for registration by that date that the house again became controlled. If in such a case the rent between the 18th July and the 18th October was so limited, the effect would be that the house was subject to the Acts as from the 18th July, the failure to apply for registration having a retrospective effect. The position, therefore, appears to be that any claim by the tenant in respect of over-payment of rent can be only in respect of the period since the 18th October, 1933. Any sum overpaid can be recovered only within six months from the date of payment (Act of 1923, s. 8 (2)). No claim, therefore, can now go back as far as either date.

To-day and Yesterday.

LEGAL CALENDAR.

13 AUGUST.—On the 13th August, 1815, William Baliol Brett, the son of a clergyman, was born at Lenham Rectory, in Kent. He was educated at Westminster School and at Caius College, Cambridge. While at the University he rowed against Oxford in 1839. In the same year he entered Lincoln's Inn, where he was called to the Bar in 1846. He was raised to the bench of the Court of Common Pleas in 1868, being subsequently promoted to the Court of Appeal, and finally appointed Master of the Rolls. While holding this post, he became a peer as Lord Esher.

14 AUGUST.—On the 14th August, 1794, the trial of Robert Watt, for high treason, opened at Edinburgh, with the Lord President's charge to the grand jury who found True Bill. The fever of the French Revolution had spread to Scotland, and the accused was charged with conspiring to form a Convention to usurp the powers of government, to seize the judges, attack the King's forces and to take possession of Edinburgh Castle. At the close of a sensational trial, the jury found him guilty, and he was sentenced to death.

15 AUGUST.—On the 15th August, 1661, Sir Heneage Finch, Solicitor-General, gave his feast as Reader in Inner Temple Hall. The King came by barge from Whitehall, accompanied by the Duke of York and the Lord Chancellor. Part of the retaining wall of the garden was removed to provide a landing stage. Lord Chief Justice Bridgman, in his robes, received the King, attended by the Reader's servants "in scarlet cloaks and white tabba doublets." Twenty violins played in the hall and "dinner was brought up by fifty select gentlemen of the Society in their gowns, who gave their attendance all dinner while." After dinner, the Duke of York and other magnates were admitted to the Society.

16 AUGUST.—On the 16th August, 1840, Edward Garrett was tried for murder at the Somerset Assizes. The prisoner, a poor shoemaker, was a most affectionate father who, finding himself in indigence and his children crying for want of food, poured laudanum down their throats and swallowed some himself. He and two of his children survived, but the youngest died. A sympathetic jury added a strong recommendation for mercy to their verdict of guilty, but Mr. Justice Coleridge held out no hope. He said: "If it were once supposed that a person under any circumstances of distress, however great, could with impunity lay hands upon the life of any human being, I am afraid to consider what dangerous consequences might arise."

17 AUGUST.—The Reverend Henry Trimmer was a curate at Newdigate, where he kept a respectable school. Lord Huntingtower was a local magnate who conceived a strong prejudice against the clergyman and his pupils and to drive them from the vicinity he adopted the remarkable expedient of erecting a pinfold within thirty yards of his house. One side of it was closed in only by the paling of Mr. Trimmer's garden. In this enclosure a bull was placed and cows were brought to him daily. The annoyance was varied by the employment of horses and mares, the braying of asses and the noise of mules. After much persecution Mr. Trimmer brought an action for nuisance. It was heard on the 17th August, 1829, and he was awarded £2,000 damages.

18 AUGUST.—On the 18th August, 1640, Mr. Baron Rigby died. He had been taken ill at the Chelmsford Assizes and removed first to Croydon and then to London where he expired. His body lay in state at Ely-place in Holborn before being carried to Preston for burial. During the Civil Wars he had held a commission as Colonel in the Parliamentary Army and made a very efficient officer.

19 AUGUST.—John Clench, formerly a Justice of the Queen's Bench, died at Holbrooke, in Essex, on the 19th August, 1607.

THE WEEK'S PERSONALITY.

John Clench had an unusually long judicial career, being appointed a Baron of the Exchequer in 1580 and a Justice of the Queen's Bench in 1584, and remaining in active judicial work till 1600. In that year, his age and infirmities caused him to be dispensed from attendance in court, though he retained the emoluments of his office. He is said to have been a special favourite with Elizabeth, who called him "her good judge," but he does not seem to have received any particular honours at her hands, and even apparently remained unknighted. Some idea of his judicial style may be gathered from an account of the Lincoln Assizes, in 1596, when he sat with Anderson, C.J., to try several cases of ecclesiastical recusancy. "They who are maliciously affected, when Mr. Justice Clinch sitteth upon the gaol, do labour to adjourn their complaints (though they be before upon the file) to the next assize; and the gentlemen in the several shires are endangered by this means to be cast into a faction." He was buried in Holbrooke Church, his monument being inscribed to the memory "*colendissimi, suique temporis antiquissimi judicis Johannis Clenche.*" Besides his effigy and that of his wife, smaller figures on each side of his tomb represented his seven sons and eight daughters.

OUT OF THE JURISDICTION.

Not long ago, on the occasion of the opening of the children's paddling beach near Tower Bridge, the Lord Mayor passed through the precincts of the Tower of London in state with sword and mace, though the Tower as a royal palace is outside the City jurisdiction. This interesting breach of custom recalls the adventures of one of his predecessors, who dared to enter the Temple in state in 1669. Invited to dine with the Inner Temple Reader, the Lord Mayor, Sir William Turner, decided to arrive in all the glory of civic authority, and when the Society protested he declared: "I will bear up my Sword and see who dares to take it down." When he arrived, he was met near the Hall by a mob of barristers and students, some of them armed under their gowns, all crying "in a very loud and rude manner," to beat down the Sword. A rush was made for the obnoxious symbol, and several pearls were knocked off the scabbard, the City Marshal's men were carried off to be put under the pump, "but were not pumped," and the officers were beaten with their own staves.

THE MAYOR'S RETREAT.

Finally, the humiliated Mayor had to take refuge in the chambers of auditor Philips, where he was besieged, while a message was sent to the King at Whitehall. All the help he got was advice to get back to the City, a matter not so easy, since when he attempted to escape, he was driven back with scurrilous and threatening language. In the end he was liberated through the intervention of the Benchers and sent off with shouting and jeering. Ten years later, while a destructive fire was devastating a considerable part of the Temple, another Mayor tried to seize a golden opportunity of asserting his pretensions. About midnight he arrived with his sword borne up, but the distracted Templars turned from the flames to beat it down and then went back to save their blazing chambers. The offended Mayor retired from the scene and soothed his wounded dignity by getting drunk in a Fleet Street tavern. As he returned home, he sent away the City fire engines that were rushing to the help of the independent lawyers.

Referring to a motoring action in which damages were awarded recently at Bangor County Court, Judge Sir Artemus Jones said: "It is lamentable that the courts are constantly troubled with cases in which insurance companies of a certain class take advantage of every liability on their insurance policies."

Obituary.

MR. A. G. BROOM.

Mr. Allen George Broom, solicitor, of Worcester, died in a nursing home on Thursday, 2nd August, at the age of fifty-four. Mr. Broom was admitted a solicitor in 1902, and practised at Worcester for many years in partnership with the late Mr. T. G. Dobbs in the firm of Messrs. T. G. Dobbs & Broom. He had continued the practice since the death of Mr. Dobbs in January last.

MR. H. J. CARPENTER.

Mr. Hedley James Carpenter, M.A., LL.M., solicitor, head of the firm of Messrs. Arthur Fisher & Co., of Tiverton, died on Sunday, 5th August, at the age of seventy-two. Mr. Carpenter, who was educated at Blundell's and Sidney Sussex College, Cambridge, was admitted a solicitor in 1890. He was for many years a member of Tiverton Town Council, and he held the office of Clerk to the Market Trustees, and also Clerk to the Greenway Trust and the Exebridge Trustees.

MR. N. CLINTON.

Mr. Norman Clinton, solicitor, head of the firm of Messrs. Eve & Clinton, of Aldershot, died on Sunday, 12th August. Mr. Clinton was admitted a solicitor in 1894.

MR. J. S. HOGG.

Mr. John Stoker Hogg, solicitor, of Broad Street Chambers, Bow Street, W.C., died at St. Bartholomew's Hospital on Wednesday, 15th August. Mr. Hogg was admitted a solicitor in 1909.

MR. C. T. RHODES.

Mr. Christopher Tait Rhodes, retired solicitor, of Halifax, died on Friday, 10th August, a few days before his ninety-first birthday. Mr. Rhodes served his articles with Messrs. Lancaster & Wright, of Bradford, and was admitted a solicitor in 1886. He had practised in Halifax from 1886 until his retirement in 1927.

MR. R. H. SMITH.

Mr. Richard Henry Smith, solicitor, deputy-coroner for the Stroud Division for about fifty years, died on Wednesday, 8th August, at the age of eighty-two. Mr. Smith, who was admitted a solicitor in 1876, was a member of the firm of Mssrs. Ball, Smith & Playne, of Stroud.

Reviews.

Manual of Law for the Cinema Trade. By GORDON ALCHIN, B.C.L., M.A., of the Middle Temple, Barrister-at-Law. 1934. Royal 8vo. pp. xxv and (with Index) 508. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

This is a comprehensive work dealing with the law affecting every branch of the film and cinema industry and to enable both the lawyer and the man of business to obtain reliable information upon all legal matters connected with the production and exhibition of films. The learned author has undertaken to traverse a very wide area of law touching matters which in the ordinary course would be found scattered through many different volumes of a legal encyclopædia. There is no doubt that the collation of these different branches of legal information necessary to the understanding of the position of proprietors of cinema theatres and providers of films must be very useful to them, and we can readily understand the importance of such a volume to business men associated with this particular industry. To give some idea of the extent of the information it contains, it is only necessary to refer to some of the subjects which form chapters in the volume. Copyright (British and International), Censorship, and Libel or Slander are fully dealt with. The legislation relating to the manufacture, storage and importation of celluloid and similar substances; the regulations relating to buildings used for exhibition, including requirements of such statutes as the Public Health Acts and the Building Acts, indicate another branch of the law which must be complied with. The law of contract in its many aspects forms the subject of an important chapter. The relations between the public and proprietors of cinema theatres involving a variety of considerations applicable to the numerous incidences that may arise, together with the review of the Statutory Rules and Regulations governing the performances, form the subject-matter of two chapters. The appendices set out a large number of statutes (wholly or in part), including the Copyright Act, 1911, the Children and Young Persons Act, 1933, various licensing statutes, the Sunday Entertainments Act, 1932, and other material statutes and orders necessary to be considered by those concerned. All this in addition to the special statutes passed for controlling the film production, such as the London Celluloid Act, 1915, and the Cinematographic Films Act, 1927—the whole comprising a really comprehensive volume which appears to supply all the information likely to be sought by those concerned. The book is written in a manner intelligible to the layman, although at the same time it must, of necessity, be a very handy volume for solicitors and others acting as advisers on these particular subjects.

Public Rights in the Seashore. By H. GALLIENNE LEMMON, M.A., LL.M., Cantab., a Solicitor of the Supreme Court and a Notary Public. 1934. Royal 8vo. pp. xvii and (with Index) 329. London: Sir Isaac Pitman & Sons, Limited. 30s. net.

This book deals with a subject of ever-increasing interest to the public as well as the legal profession. As the preface points out, the subject has been hitherto somewhat neglected. The author has amply made up for this and has produced a work of great value. The treatment is, as he points out, necessarily academic and the necessity becomes strikingly apparent on reading the book, for the greater part of the relevant learning is contained either in old cases or text-books. The author has spared no pains in his researches, which have gone back to the earliest sources of information. The bibliography and the list of cases examined, but not included in the book, bear eloquent testimony to his industry. There is a valuable list of Acts specially relating to the foreshore and an interesting alphabetical series of digests of the law on this subject as it is in the various dominions and colonies. Armed with this useful contribution to our mass of legal text-books, the holiday maker need have no fear. Whether he wishes to pick up a shell, or whether he merely cuts his foot on one, whether he finds a hogshead of tobacco washed up or whether he wonders why there is no hut on the shore where he can buy some, he will find the relevant law in this book.

Books Received.

The Penal Code of the Russian Socialist Federal Soviet Republic. 1934. London: H.M. Stationery Office. 1s. 3d. net. Postage extra.

The British Year Book of International Law. 1934. Fifteenth year of issue. Royal 8vo. pp.vi and (with index) 240. London: Humphrey Milford, Oxford University Press. 16s. net.

Fifteenth Annual Report of the Ministry of Health, 1933-34. London: H.M. Stationery Office. 6s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited. London, Liverpool and Birmingham.]

Notes of Cases.

Judicial Committee of the Privy Council.

***In re* a Reference under the Judicial Committee Act, 1833, and *In re* Piracy *Jure Gentium*.**

The Lord Chancellor, Lord Atkin, Lord Tomlin, Lord Macmillan, and Lord Wright. 26th July, 1934.

PIRACY *Jure Gentium*—ACTUAL ROBBERY NOT AN ESSENTIAL ELEMENT IN THE CRIME—FRUSTRATED ATTEMPT TO COMMIT A PIRATICAL ROBBERY IS PIRACY *Jure Gentium*.

The following question was submitted to the Board by an Order in Council dated the 10th November, 1933: "Whether actual robbery is an essential element in the crime of piracy *jure gentium*, or whether a frustrated attempt to commit a piratical robbery is not equally piracy *jure gentium*." The reference arose following a trial at the Criminal Sessions at Hong-Kong in February, 1931. Two Chinese junks had attacked a third Chinese junk with the object of capturing her. Shots were fired, but owing to the intervention of other vessels the chase was unsuccessful, and the crews of the attacking vessels were brought to Hong-kong and put on trial on a charge of piracy. The accused were found *Guilty*, but the question was reserved for the consideration of the full court of Hong-kong whether an accused person might be convicted of piracy *jure gentium* in circumstances where no actual robbery had occurred. The full court held that robbery was necessary to support a conviction of piracy, and in the result the convictions of the accused were quashed and they were discharged. No appeal lay from the judgment of the full court.

The LORD CHANCELLOR, giving the Report of the Board, pointed out that the present proceedings were in no sense an appeal from the full court of Hong-kong, whose judgment stood. A careful examination of the subject of piracy showed a gradual widening of the earlier definition of piracy to bring it from time to time more in consonance with situations either not thought of or not in existence when the older jurisconsults were expressing their opinions. Having examined all the various cases, all the various statutes, and all the opinions of the various jurisconsults cited to them, they had come to the conclusion that the better view and the proper answer to give to the question addressed to them was that actual robbery was not an essential element in the crime of piracy *jure gentium*, and that a frustrated attempt to commit a piratical robbery was equally piracy *jure gentium*.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *Wilfrid Lewis*, on behalf of the Attorney-General, supported the view that actual robbery was not an essential element in the crime of piracy *jure gentium*; *Sir Leslie Scott*, K.C., and *Kenelm Preedy*, for the Secretary of State for the Colonies, supported the contrary view.

SOLICITOR: *The Treasury Solicitor*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Appeal.

Williamson *v.* Ough (Inspector of Taxes).

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 20th and 28th June, 1934.

REVENUE—WILL—TRUST FUND—INCOME—DISCRETION TO MAKE PAYMENTS OUT OF CAPITAL—INCOME TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D, Case III.

Appeal from a decision of Finlay, J.

A testator, who died in 1927, by his will, gave his wife a life annuity as a prior charge on his estate, directing the surplus income to be equally divided among her and his three daughters. He gave his trustees a discretion to make payments out of capital on account of income. The payments were to be recouped "so far as practicable and as and when my trustees shall think proper." The income available became considerably reduced and the trustees under their power paid various sums from capital to the beneficiaries, no income tax being deducted and no recoupment subsequently made. Assessments to income tax were made in respect of sums so paid during the financial years ending in April, 1928, and April, 1929, under Case III of Sched. D, on the ground that they were annual payments. Finlay, J., reversed this decision.

Lord HANWORTH, M.R., allowing the appeal, said that the will left the time and manner of the recoupment in the trustees' discretion. It might be done by holding back future income coming into their hands. There was no question of a loan, and the sum was paid to the beneficiaries because they were entitled to income payments.

SLESSER, L.J., agreed, and ROMER, L.J., dissented.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.), *J. Stamp* and *R. Hills*; *C. Radcliffe*.

SOLICITORS: *Solicitor of Inland Revenue*; *Ellis, Peirs & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Central London Railway *v.* Commissioners of Inland Revenue.

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 21st and 22nd June, 1934.

REVENUE—COMPANY—INTEREST ON DEBENTURES—DEBITED TO CAPITAL—POWER IN PRIVATE ACT—INCOME TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, rr. 19 and 21—LONDON ELECTRIC ETC. RAILWAY COMPANIES ACT (20 & 21 Geo. 5, c. lxxxviii), ss. 118 and 124.

Appeal from a decision of Finlay, J.

Under s. 118 of the London Electric etc. Railway Companies Act, 1930, the company might charge to capital account the interest accruing on debenture stock and under s. 124 all moneys raised by the company under the Act were to "be applied only to the purposes of its undertaking to which capital is properly applicable." By virtue of s. 118, the company debited to capital part of the interest due on its debentures and deducted income tax before payment. It had only one banking account, out of which all payments were made and its income for the year in question was sufficient to pay the debenture interest. Finlay, J., held that the interest should be treated as paid out of "profits or gains brought into charge" within r. 19 of the All Schedules Rules and that r. 21 did not apply.

Lord HANWORTH, M.R., allowing the appeal, said that no account keeping by the debtor could alter the Crown's rights (*Attorney-General* v. *London County Council*, 4 T.C. 265, at p. 301). The substance must be looked at. To have a larger sum for dividends, the company had paid part of the interest out of capital. In the accounts there was a nice distinction drawn between the interest paid out of profits and brought into charge and that debited to capital. (See also *Luipaards Vlei Estate and Gold Mining Co. Ltd.* v. *Commissioners of Inland Revenue* [1930] 1 K.B. 593.)

SLESSER and ROMER, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Donald Somervell, K.C.) and *R. Hills*; *Latter*, K.C., and *A. Alcock*.

SOLICITORS: *Solicitor of Inland Revenue*; *Bircham & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Duke of Westminster *v.* Commissioners of Inland Revenue.

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 28th and 29th June and 2nd July, 1934.

REVENUE—DEED BY EMPLOYER—PAYMENTS TO SERVANTS CONTINUING SERVICES WAGES FOREGONE—INCOME FOR SUR-TAX—DEDUCTIONS—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, r. 19—FINANCE ACT 1922 (12 & 13 Geo. 5, c. 17), s. 18.

Appeal from a decision of Finlay, J.

The Duke, wishing to provide for certain old servants, executed several deeds whereby he covenanted during the joint lives of himself and the particular servant or for seven years to pay him a weekly sum (less than his weekly wages) which was expressed to be without prejudice to any remuneration he might become entitled for services to the Duke. A form of letter was sent to each servant and acknowledged by him. It stated that while the deed did not disentitle him to full remuneration for future work it was expected that he would be content with the provision made, with the addition, while he was in the Duke's service, of the amount necessary to make up the wages he had been receiving. Finlay, J., held that payments to employees still in the Duke's service could not be deducted in calculating his income for the purposes of sur-tax.

Lord HANWORTH, M.R., allowing the appeal, said that payments to servants no longer rendering services would certainly fall within Rule 19 of the All Schedules Rules of the Income Tax Act, 1918. The case was not affected by s. 18 of the Finance Act, 1922. Whether or not the services were rendered the covenantor was bound to make the payments and therefore under Rule 19 the covenantee was bound to allow deduction of income tax in the payment to him.

COUNSEL: *Needham, K.C., Cleveland-Stevens, K.C.*, and *C. King; The Attorney-General* (Sir Thomas Inskip, K.C.) and *R. Hills.*

SOLICITORS: *Boodle, Hatfield & Co.; Solicitor of Inland Revenue.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Alfred Leney & Co., Ltd. *v.* Whelan (Inspector of Taxes).

Lord Hanworth M.R., Slesser and Romer, L.JJ.
25th and 26th June, 1934.

REVENUE—COMPANY—BREWERY BUSINESS—LEASES OF PUBLIC-HOUSES—TIE COVENANTS—LEASE OF ALL PROPERTIES—CEASING TO CARRY ON BUSINESS—RENTS—INCOME TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Scheds. A and D.

Appeal from a decision of Finlay, J.

Till 1926 Alfred Leney & Co. carried on a brewery business and leased several public-houses to tenants, who covenanted to purchase from it or its nominees all alcoholic liquor required by them. In that year it leased all its properties to another company, and thereafter ceased to carry on its former trade. The tenants of the tied houses were assessed for income tax under Sched. A as occupiers. In paying their rents to the tenant company they made deductions under Sched. A No. VIII, r. 1, of the Income Tax Act, 1918, in respect of the tax assessment, and the tenant company in paying its rent to Alfred Leney & Co. made corresponding deductions. The rents payable to Alfred Leney & Co. amounted to about £20,000. The amount of the assessment under Sched. A upon which tax was paid was about £5,500. In respect of the margin between this sum and the whole rent of the properties, Alfred Leney & Co. was assessed under Sched. D as for profits of a trade. Finlay, J., upheld this assessment.

Lord HANWORTH, M.R., allowing the appeal, said that the way to estimate the value of premises under Sched. A was laid down in *R.* v. *Shoreditch Assessment Committee* [1910] 2 K.B. 859, at p. 883, and *Bradford-on-Avon Assessment Committee* v. *White* [1898] 2 Q.B. 630, at p. 639. What was taxed, whether under Sched. A or Sched. D, was profits and gains (*London County Council* v. *Attorney-General* [1901] A.C. 26, at p. 36). Under Sched. A, it was profits arising from land. *Coman* v. *Governors of the Rotunda Hospital, Dublin* [1921] A.C.1, made further assessment in this case impossible. The schedules were mutually exclusive (see *Fry* v. *Salisbury House Estates* [1930] A.C. 432, at p. 455), and after payment under Sched. A Sched. D is inapplicable.

SLESSER and ROMER, L.JJ., agreed.

COUNSEL: *Latter*, K.C., and *C. King; The Solicitor-General* (Sir Donald Somervell, K.C.) and *R. Hills.*

SOLICITORS: *Godden, Holme & Ward; Solicitor of Inland Revenue.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Audit (Local Authorities) Act, 1927; *In re* A Decision of H. W. McGrath.

Scrutton, Greer and Maugham, L.JJ. 21st, 22nd and 25th June and 9th July, 1934.

LOCAL GOVERNMENT — AUDIT — COUNTY ACCOUNTANT — SALARY — ADDITIONAL SALARY FIXED — RETROSPECTIVE PAYMENT—SURCHARGE—RELIEF—AUDIT (LOCAL AUTHORITIES) ACT, 1927 (17 & 18 Geo. 5, c. 31), s. 1.

Appeal from the King's Bench Division.

The Finance Act, 1920, imposed on local authorities certain duties in connection with the collection of road fund licences. In November, 1920, the Minister of Transport in a circular dealt with the reimbursement of expenses incurred by them. In respect of the "supervising staff," he said that where "local authorities consider that the increased duties and responsibilities thrown on such officers require some addition to be made to their salaries, the Minister will be prepared to give the fullest consideration to any representations . . ." In Durham, the "supervising staff" was the county accountant. In 1925, the county council adopted a report recommending an increase of £100 in his salary as from the 1st February, 1925. The report added: "The Ministry of Transport has since the coming into operation of the Roads Act, 1920, paid into the county fund the sum of £600 in respect of the county accountant's supervision of the department, and the county accountant has up to the present received no extra remuneration for the additional work cast upon him." Thenceforth, the county accountant received this additional salary, nothing being then done with regard to the years elapsed since 1921. In 1931, the county council adopted a report recommending that as £1,575 had been received from the Minister in connection with the supervision arrangement, but only £600 had been granted to the county accountant, £700 should be paid to him out of these moneys in respect of his services. Accordingly, he received this sum. The auditor, H. W. McGrath, disallowed this payment and surcharged the members of the county council who had supported the resolution. On appeal, the Divisional Court allowed the appeal and quashed the surcharge, making a declaration that the persons surcharged were not to be subject to the disqualification imposed by s. 1 of the Audit (Local Authorities) Act, 1927.

SCRUTTON, L.J., allowing the appeal, said that there was nothing in the records of the council to show that the determination in 1925 to increase the accountant's salary was merely provisional, and the period from 1921 to 1931 still open to review. Representative bodies could not, years after the remuneration of their officers had been clearly fixed, make further payments in respect of past years. The payment of 1931 was contrary to law. As to the surcharge, the Minister had remitted surcharges approved by the House of Lords in *Roberts* v. *Hopwood* [1925] A.C. 578. In the present case, the persons surcharged acted in the belief that they were authorised by law. This decision established that retrospective *ex gratia* payments were contrary to law. Having regard to the occupations of these persons and their honest belief, the declaration of the Divisional Court as to the surcharges would not be interfered with.

GREER and MAUGHAM, L.JJ., agreed.

COUNSEL: *Croom-Johnson*, K.C., *C. E. Simes* and *C. Scholefield; Morley*, K.C., and *D. H. Robson; Mallalieu.*

SOLICITORS: *Park, Nelson & Co.; Sharpe, Pritchard & Co.*, agents for *Harold Jevons*, of Durham; *Doyle, Devonshire & Co.*, agents for *Molineux, McKeag & Cooper*, of Newcastle-on-Tyne.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

In re a Solicitor.

Lord Hewart, C.J., Avory and Swift, JJ. 24th July, 1934.

SOLICITOR—PROCEEDINGS BY DISCIPLINARY COMMITTEE OF LAW SOCIETY—NO ORDER—APPEAL BY LAW SOCIETY NOT COMPETENT—SOLICITORS ACT, 1932, s. 4, 5 (2).

This was a preliminary objection taken on an appeal by The Law Society against the finding of the Disciplinary Committee of The Law Society that in respect of certain allegations against him a solicitor had not been guilty of professional misconduct. An application had been made to the committee on behalf of The Law Society that a solicitor might be required to answer the allegations contained in an affidavit. The committee heard evidence, and in a document set out their findings of fact, in which they said that they did not find professional misconduct. The Law Society now appealed. Counsel for the respondent solicitor took a preliminary objection that no appeal lay because no order had been made.

Lord HEWART, C.J., said that if it had been intended that there should be an appeal to the High Court not merely against an order but also against any findings of the committee nothing would have been easier than to say so. In *Reg.* v. *Keepers of the Peace and Justices of the County of London*, 25 Q.B.D. 357, Lord Coleridge, C.J., said at p. 360: "Our decision must be governed by broad and well-recognised principles of construction. One of those is, that a man acquitted is not to be again proceeded against with respect to the same matter; another principle is that an appeal is never given except by statute." Each of those sentences seemed to him (Lord Hewart) to apply with great force to the present case. The committee had deliberately abstained from making any order. He had come to the conclusion that an appeal of this nature was not under that Act competent, and that the preliminary objection must be upheld and the appeal dismissed, with costs.

AVORY and SWIFT, JJ., also gave judgment to the same effect.

COUNSEL: *Roland Oliver*, K.C., and *W. M. Andrew*, for The Law Society; *Malcolm Hilbery*, K.C., and *R. Eagle*, for the respondent.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

	PAGE
"Arpad," The	534
Attorney-General for Ontario *v.* Perry	488
Bedwas Navigation Colliery Co. (1921) Ltd. *v.* Executive Board for South Wales District Coal Mines Scheme, 1930	535
Belbridge Property Trust, Limited *v.* Milton	489
Bevis *v.* Bevis	569
Boyce (Inspector of Taxes) *v.* Whitwick Colliery Co. Ltd.	568
Chocolate Express Omnibus Co. Ltd. *v.* London Passenger Transport Board	518
Coulsdon and Purley Urban District Council *v.* Surrey County Council	535
Conway, Theo. Ltd. *v.* Kenwood	503
Coventry Corporation *v.* Surrey County Council	567
Cunliffe *v.* Attorney-General	520
Denhert *v.* Denhert and Gamil	520
Dickens, *In re*: Dickens *v.* Hawksley and Others	569
Dinshaw *v.* Commissioner of Income Tax, Bombay Presidency	518
Elliott (Inspector of Taxes) *v.* Burn	550
Forshaw, *In re*: Wallace *v.* Middlesex Hospital	519
Garland, *In re*: Eve *v.* Garland	519
Gossage *v.* Gossage and Heaton	551
Herbert, *ex parte*	488
Hughes *v.* Union Cold Storage Co. Ltd.	551
Marshall *v.* Blackpool Corporation	488
Maundy Gregory, *In re*: *Ex parte* Norton	550
Pateras and Others *v.* Royal Exchange Assurance	569
Privett *v.* Darracq Motor Engineering Co. Limited	550
M'Gillivray *v.* Hope and Another	503
Rex *v.* Milk Marketing Board: *Ex parte* North	536
Robinson *v.* Graves	536
Shaw and Others *v.* London County Council and Another	519
Trollope, Geo., & Sons *v.* Martyn Bros.	568
Van den Berghs Ltd. *v.* Clark (Inspector of Taxes)	568
Versicherungs und Transport Aktiengesellschaft Daugava *v.* Henderson	503
Winmill *v.* Winmill	536

Rules and Orders.

THE RULES OF THE SUPREME COURT (No. 4), 1934.
DATED JULY 30, 1934.

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. Rule 20 of Order LVIII shall be extended so as to apply to appeals to which section 2 of the Administration of Justice (Appeals) Act, 1934, (*) applies, and accordingly that Rule shall be amended by omitting "on questions of law under the Workmen's Compensation Act, 1925, (†) and appeals under the Agricultural Holdings Act, 1923," (‡) and by substituting therefor the words "(other than appeals to which Rule 21 of this Order applies)."

2. Where an appeal from a decision of a County Court given before the 7th August, 1934, lies to the Court of Appeal instead of the High Court by virtue of section 2 of the Administration of Justice (Appeals) Act, 1934, and the Order of the Lord Chancellor made under that section and dated the 26th day of July, 1934, (§) the appeal may be heard and determined by the Court of Appeal notwithstanding that any provisions of Order LVIII have not been complied with in respect of that appeal, if the corresponding provisions of Order LIX have been complied with.

3. These Rules may be cited as the Rules of the Supreme Court (No. 4), 1934, and shall come into operation on the 7th day of August, 1934, and the Rules of the Supreme Court, 1883, (‖) as amended, shall have effect as further amended by these Rules.

Dated this 30th day of July, 1934.

Sankey, C.	*Rigby Swift*, J.
Hewart, C.J.	*A. C. Clauson*, J.
Hanworth, M.R.	*T. J. O'Connor.*
F. B. Merriman, P.	*A. W. Cockburn.*
F. H. Maugham, L.J.	*C. H. Morton.*
A. A. Roche, J.	*Roger Gregory.*

(*) 24–5 G. 5. c. 40. (†) 15–6 G. 5. c. 84.
(‡) 13–4 G. 5. c. 9. (§) S.R. & O. 1934, No. 839.
(‖) S.R. & O., Rev. 1904, XII, Supreme Court, E., pp. 54–117 (printed as amended to Dec. 31, 1903). For subsequent amendments, *see* "Index to S.R. & O in Force, June 30, 1933," at pp. 888–91.

THE SUPREME COURT FEES (AMENDMENT NO. 2) ORDER, 1934.
DATED JULY 27 1934.

The Lord Chancellor, the Judges of the Supreme Court and the Treasury, in pursuance of the powers and authorities vested in them respectively, by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925, (*) section 305 of the Companies Act, 1929 (†) and sections 2 and 3 of the Public Offices Fees Act, 1879, (‡) Do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them make, advise, concur in, sanction and consent to, the following Order:—

1. A Fee referred to by number in this Order means the Fee so numbered in Schedule I to the Supreme Court Fees Order, 1930 (§).

2. The following Fee shall be substituted for Fee No. 97:—

First Column. Item.	Second Column. Fee. £ s. d.	Third Column. Document to be stamped.
"97. On filing a notice of appeal—		
(*a*) from a County Court under Administration of Justice (Appeals) Act, 1934, s. 2	2 0 0	The notice of appeal.
(*b*) in any other case		
(i) If the appeal is entered in an Interlocutory List	2 0 0	
(ii) If the appeal is entered in any other list	5 0 0	

3. This Order may be cited as the Supreme Court Fees (Amendment No. 2) Order, 1934.

Dated the 27th day of July, 1934.

Sankey, C.	*Hanworth*, M.R.
Hewart, C.J.	*F. B. Merriman*, P.
Lords Commissioners of His Majesty's Treasury.	*Austin Hudson.*
	Walter J. Womersley.

(*) 15–6 G. 5. c. 49. (†) 19–20 G. 5. c. 23.
(‡) 42–3 V. c. 58. (§) S.R. & O. 1930 (No. 579) p. 1728.

THE APPEALS FROM COUNTY COURTS ORDER, 1934.
DATED JULY 26, 1934.

Whereas by subsection (1) of section 2 of the Administration of Justice (Appeals) Act, 1934, (*) (hereinafter called "the Act") it is enacted that every appeal from a judgment, direction, decision, decree or order of a Judge of a County Court given or made after such date as the Lord Chancellor may appoint shall lie to the Court of Appeal instead of to the High Court:

Now, therefore, I, the Right Honourable John Viscount Sankey, Lord High Chancellor of Great Britain, in exercise of the power so conferred upon me and of all other powers enabling me in that behalf, Do hereby order that the 1st day of January, 1934, shall be the appointed day referred to in the said section of the Act.

Dated the 26th day of July, 1934. *Sankey*, C.

(*) 24–5 G. 5. c. 40.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve, on the recommendation of the Home Secretary, that Mr. JOHN FREDERICK EALES, K.C., M.P., be appointed Recorder of Nottingham in the place of the late Mr. Henry Holmes Joy, K.C.; and that Mr. ARTHUR MORLEY, K.C., be appointed Recorder of Sheffield to succeed Mr. Walter Hedley, K.C., who has been appointed a Metropolitan Police Magistrate.

Mr. Eales, who was called to the Bar by the Middle Temple in 1910, was appointed Recorder of Coventry in 1928, and took silk in 1929. He is a member of the General Council of the Bar.

Mr. Morley was called to the Bar by the Middle Temple in 1913. He has been Commissioner of the High Court of Southern Rhodesia, Recorder of Richmond, Yorkshire, and since 1928 Recorder of Huddersfield.

Mr. JOHN FREDERIC ROOK, Assistant Solicitor in the office of the Clerk to the Bingley Urban District Council, has been appointed Legal Assistant to the Dagenham Urban District Council. Mr. Rook was admitted a solicitor in 1932.

Wills and Bequests.

Mr. John Henry Bradbury, solicitor, of Greenfield-within-Saddleworth, left £8,551, with net personalty £6,917.

Mr. Evan John Davies, solicitor, of Porthcawl, left £25,915 with net personalty £15,680.

Mr. Ernest Charles Jeffery, solicitor, of Bradford, left property of the gross value of £40,654, with net personalty £35,783. He left, subject to life interests: £1,200 to Bradford Grammar School for founding a scholarship at Oxford, Cambridge, London, Durham or Edinburgh; £1,000 to the incumbent of the benefice of St. Paul, Manningham; £1,000 to Bradford Royal Infirmary for a bed in the cancer ward; £500 to Bradford Tradesmen's Homes; £1,000 to Bradford Diocesan Trust Fund; and £250 to Rands Almshouses, Manningham.

GENERAL COUNCIL OF THE BAR OF IRELAND.

The following resolution, says *The Times*, has been passed by the General Council of the Bar of Ireland: "We have before us the report of the proceedings of the Bar Council of the 1st day of December, 1916, on the subject of consultations in civil proceedings and the resolution of the Council on the matter. We are of opinion that the question of seeing witnesses at consultation is a matter altogether in the discretion of counsel in each particular case. We regard the position of counsel in criminal cases to be as follows: Counsel has absolute discretion as to what consultation he holds and as to what witnesses he interviews, and there should be no obstacle placed in his way by any rule or practice that might hamper the conduct of the defence of an accused person."

NEW APPEAL COURT.

Nearly eighty appeals, says *The Daily Telegraph*, have already been set down for the new division of the Court of Appeal, which, under the provisions of the Administration of Justice (Appeals) Act just passed, comes into existence at the beginning of the Michaelmas Law Sittings on 2nd October.

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 30th August, 1934.

	Div. Months.	Middle Price 15 Aug. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	112½	3 11 1	3 4 0
Consols 2½%	JAJO	81	3 1 9	—
War Loan 3½% 1952 or after	JD	104⅜	3 7 1	3 3 7
Funding 4% Loan 1960-90	MN	115½	3 9 3	3 2 4
Victory 4% Loan Av. life 29 years	MS	114	3 10 2	3 5 0
Conversion 5% Loan 1944-64	MN	119	4 4 0	2 12 1
Conversion 4½% Loan 1940-44	JJ	111	4 1 1	2 10 0
Conversion 3½% Loan 1961 or after	AO	105	3 6 8	3 4 5
Conversion 3% Loan 1948-53	MS	101⅝	2 19 0	2 17 1
Conversion 2½% Loan 1944-49	AO	98	2 11 0	2 13 4
Local Loans 3% Stock 1912 or after	JAJO	92¾	3 4 8	—
Bank Stock	AO	367½	3 5 4	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	84½	3 5 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	91½	3 5 7	—
India 4½% 1950-55	MN	112½	4 0 0	3 9 5
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3 17 7	3 11 4
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	111	3 12 1	3 2 4
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102	2 18 10	2 16 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 19 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 13 11
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	100	3 15 0	3 15 0
Canada 4% 1953-58	MS	107	3 14 9	3 9 10
Natal 3% 1929-49	JJ	98	3 1 3	3 3 5
New South Wales 3½% 1930-50	JJ	98	3 11 5	3 13 4
New Zealand 3% 1945	AO	98	3 1 3	3 4 5
Nigeria 4% 1963	AO	109	3 13 5	3 10 0
Queensland 3½% 1950-70	JJ	98	3 11 5	3 12 0
South Africa 3½% 1953-73	JD	104	3 7 4	3 4 3
Victoria 3½% 1929-49	AO	99	3 10 8	3 11 10
W. Australia 3½% 1935-55	AO	98	3 11 5	3 12 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	91	3 5 11	—
Croydon 3% 1940-60	AO	98½	3 0 11	3 1 8
Essex County 3½% 1952-72	JD	104	3 7 4	3 4 1
*Hull 3½% 1925-55	FA	101	3 9 4	—
Leeds 3% 1927 or after	JJ	91	3 5 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	78½	3 3 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	91½	3 5 7	—
Manchester 3% 1941 or after	FA	91	3 5 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	97	2 11 7	2 15 0
Metropolitan Water Board 3% "A" 1963-2003	AO	93	3 4 6	3 5 1
Do. do. 3% "B" 1934-2003	MS	94	3 3 10	3 4 5
Do. do. 3% "E" 1953-73	JJ	98	3 1 3	3 1 10
Middlesex County Council 4% 1952-72	MN	111	3 12 1	3 3 8
‡ Do. do. 4½% 1950-70	MN	115	3 18 3	3 5 7
Nottingham 3% Irredeemable	MN	91	3 5 11	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 6 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture	JJ	118½	3 15 11	—
Gt. Western Rly. 5% Debenture	JJ	128	3 18 2	—
Gt. Western Rly. 5% Rent Charge	FA	126½	3 19 1	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124½xd	4 0 4	—
Gt. Western Rly. 5% Preference	MA	112xd	4 9 3	—
Southern Rly. 4% Debenture	JJ	106½	3 15 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3 13 9	3 10 5
Southern Rly. 5% Guaranteed	MA	124½xd	4 0 4	—
Southern Rly. 5% Preference	MA	112xd	4 9 3	—

*Not available to Trustees over par. ‡Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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ADVERTISERS' INDEX.

	PAGE
"Accountant," The	iii
Baldwin & Sons, Ltd., A. H.	i
Bliss, H. J., & Sons	xii
British Sailors' Society	xi
Camberwell House	iv
Church Army	ii
Church of England Incorporated Society for Providing Homes for Waifs & Strays	ix
Drivers & Norris	xii
Ede & Ravenscroft	iv
Equity and Law Life Assurance Society	vi
Field & Sons	iv
Foster & Cranfield	xii
General Reversionary and Investment Co.	i
Guarantee Society, Ltd., The	i
Hospital for Sick Children	vii
Jordan & Sons, Ltd.	i, iii
Knight, Frank & Rutley	xii
Law Association	ii
Law Reversionary Interest Society, Ltd.	vi
Legal & General Assurance Society, Ltd.	v
Maple & Co., Ltd.	xi
National Hospital	xii
National Institute for the Blind	iv
National Library for the Blind	iv
National Society for Cancer Relief	i
Neale, P. A., & Co.	xi
Ocean Accident & Guarantee Corporation, Ltd.	i
Peckham House Mental Hospital	iv
People's Dispensary for Sick Animals	ii
Phœnix Assurance Company Ltd.	i
Princess Elizabeth Hospital for Children	xi
"Rating and Income Tax"	x
Reversionary Interest Society, Ltd.	i
Royal Surgical Aid Society	iv
Salter, Rex & Co.	xii
Salvation Army	xii
Society of Incorporated Accountants and Auditors	ix
Smallwood's (Miss) Society for the Assistance of Ladies in Reduced Circumstances	xi
Solicitors' Law Stationery Society, Ltd.	i, iii, vii, viii, ix, x
Standard Translation Bureau	xii
St. Dunstan's	ix
Stevens & Sons, Ltd.	iv
Surveyors, Auctioneers and Estate Agents Directory	xii
Sweet & Maxwell, Ltd.	iv
Weatherall, Green & Smith	xii
Westminster Hospital	vii
Wheatley & Mackenzie	xii

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